

ORIGINAL

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No.

James C. Bastian, Jr. - Bar No. 175415
 Mark Bradshaw - Bar No. 192540
MARSHACK SHULMAN HODGES & BASTIAN LLP
 26632 Towne Centre, Suite 300
 Foothill Ranch, California 92610
 Telephone: (949) 340-3400
 Facsimile: (949) 340-3000

**UNITED STATES BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA**

In re:

ZYAN COMMUNICATIONS, INC.,

Debtor(s).

FOR COURT USE ONLY

FILED

01 OCT 12 PM 2:49
 CLERK U.S. BANKRUPTCY COURT
 CENTRAL DISTRICT OF CALIFORNIA
 BY _____ DEPUTY

CASE NO.: **LA 00-43483 KM**

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: **Sale Date To Be Set - Hearing on
 Motion Set for November 14, 2001**

Time: **11:00 A.M.**

Location: **U.S. Bankruptcy Court, 255 E. Temple St., Courtroom 1468, Los Angeles, CA 90012**

Type of Sale:

☒ Public☐ Private

Last date to file objections:

October 31, 2001

Description of Property to be Sold: See the attached Notice of Hearing on Debtor's Motion for Order
 Authorizing Debtor to Conduct Auction Liquidation Sale and Assignment of Personal Property
 Assets et al. (the "Hearing Notice")

Terms and Conditions of Sale: See the attached Hearing Notice

Proposed Sale Price: See the attached Hearing Notice

Overbid Procedure (If Any): See the attached Hearing Notice

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

November 14, 2001 at 11:00 A.M.

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

James C. Bastian, Jr., Esq.

Marshack Shulman Hodges & Bastian LLP

26632 Towne Centre, Suite 300, Foothill Ranch, CA 92610

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Date: October 8, 2001

360FA

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

FILE

In re

**ZYAN COMMUNICATIONS, INC.,
a Delaware corporation, fdba
INTERNET EXPRESS NETWORK, INC.,
fdba INTERNET DESIGN GROUP,**

Debtor.

**Debtor's Address:
707 Wilshire Boulevard, 14th Floor
Los Angeles, CA 90017**

Tax I.D. No. 95-4570574

Case No. LA 00-43483 KM
Chapter 11


**NOTICE OF ERRATA RE: HEARING ON DEBTOR'S
MOTION FOR ORDER AUTHORIZING DEBTOR TO
CONDUCT AUCTION LIQUIDATION SALE AND
ASSIGNMENT OF PERSONAL PROPERTY ASSETS
OF THE ESTATE FREE AND CLEAR OF LIENS
PURSUANT TO BANKRUPTCY CODE SECTION
363, AND TO EMPLOY LIQUIDATION AGENT
AND PAY COMPENSATION THERETO**

Date: November 14, 2001
Time: 11:00 A.M.
Place: Courtroom 1468
Edward R. Roybal Federal Bldg.
255 E. Temple Street
Los Angeles, CA 90012-3300

PLEASE TAKE NOTICE that the Notice of Hearing on Debtor's Motion for Order Authorizing Debtor to Conduct Auction Liquidation Sale and Assignment of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Section 363, and to Employ Liquidation Agent and Pay Compensation Thereto (the "Auction Sale Motion") filed by Zyan Communications, Inc., showed an incorrect hearing time. **THE CORRECT TIME FOR HEARING ON THE AUCTION SALE MOTION IS NOVEMBER 14, 2001, AT 11:00 A.M.,** in Courtroom 1468 of the above-entitled Court located at 255 East Temple Street, Los Angeles, California 90012.

Dated: October 10, 2001

James C. Bastian, Jr. - Bar No. 175415
Mark Bradshaw - Bar No. 192540
MARSHACK SHULMAN HODGES & BASTIAN LLP
26632 Towne Centre, Suite 300
Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
Facsimile: (949) 340-3000



James C. Bastian, Jr.
Mark Bradshaw
Attorneys for the Debtor and
Debtor in Possession Zyan Communications, Inc.,
a Delaware corporation

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

In re

**ZYAN COMMUNICATIONS, INC.,
a Delaware corporation, fdba
INTERNET EXPRESS NETWORK, INC., fdba
INTERNET DESIGN GROUP,**

Debtor.

**Debtor's Address:
707 Wilshire Boulevard, 14th Floor
Los Angeles, CA 90017**

Tax I.D. No. 95-4570574

Case No. LA 00-43483 KM
Chapter 11

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR ORDER
AUTHORIZING DEBTOR TO CONDUCT AUCTION
LIQUIDATION SALE AND ASSIGNMENT OF PERSONAL
PROPERTY ASSETS OF THE ESTATE FREE AND CLEAR
OF LIENS PURSUANT TO BANKRUPTCY CODE SECTION
363, AND TO EMPLOY LIQUIDATION AGENT AND PAY
COMPENSATION THERETO**

Date: November 14, 2001
Time: 10:00 A.M.
Place: Courtroom 1468
Edward R. Roybal Federal Bldg.
255 E. Temple Street
Los Angeles, CA 90012-3300

PLEASE TAKE NOTICE that a hearing on the **Debtor's Motion for Order Authorizing Debtor to Conduct Auction Liquidation Sale and Assignment of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Section 363, and to Employ Liquidation Agent and Pay Compensation Thereto** (the "Auction Sale Motion") filed by Zyan Communications, Inc., a Delaware corporation, the debtor and debtor in possession herein ("Debtor" or "Zyan") has been scheduled for **November 14, 2001, at 10:00 A.M.**, in Courtroom 1468 of the above-entitled Court located at 255 East Temple Street, Los Angeles, California 90012.

A. Background Information

The Debtor filed a petition under Chapter 11 of the Bankruptcy Code on December 1, 2000 (the "Petition Date"), and has continued in the possession of its property and the management of its affairs.

Prior to the Petition Date, Zyan was a leading, national digital subscriber line ("DSL") service provider focused on delivering broadband services to the business market. As a result of developments since the Petition Date, including the Debtor's inability to provision new DSL lines and the fact that numerous of its customers have filed for bankruptcy protection, the Debtor projected that it was spending more money each month than it generated. Accordingly, the only option available to the Debtor is the orderly sale of its operating assets. The Debtor has undertaken extensive efforts to consolidate operations, and to reduce overhead and operating costs to a minimum level necessary to maintain and preserve the value of assets until they can be sold. The Debtor has already sought and obtained Court approval for the sale of the Debtor's most valuable assets. A summary of these sales is as follows:

Covad Sale. In connection with the wind-down and liquidation of its operations and assets, upon the Debtor's motion, on April 13, 2001, the Court entered that certain Order Authorizing Sale and Assignment of Certain Assets of the Estate Free and Clear of Liens and Release of Claims (the "April 13 Sale Order"). Pursuant to the April 13 Sale Order, the Debtor sold its rights under its Covad DSL partner agreements and/or end users contracts to Covad. The Debtor has migrated its DSL partner agreements and/or end users to Covad, and/or its designee(s), consistent with the terms of the April 13 Sale Order. As a result of the April 13 Sale Order and the successful migration of lines, the is entitled to certain consideration from Covad, primarily in the form of debt-reduction.

InternetConnect Sale. Upon the Debtor's emergency motion, on April 16, 2001, the Court entered the Order Authorizing Sale of Assets of the Estate Out of the Ordinary Course of Business and Free and Clear of Liens (the "April 16 Sale Order"). Pursuant to the April 16 Sale Order, the Debtor sold its rights under its Northpoint-supplied DSL lines to InternetConnect. The Debtor has completed the process of migrating those DSL lines to InternetConnect consistent with the terms of the April 16 Sale Order. All consideration to be paid in connection with the April 16 Sale Order has been paid. Subsequent to entry of the April 16 Sale Order and consummation of the underlying sale, InternetConnect filed its own voluntary Chapter 11 bankruptcy petition.

MegaPath Sale. On May 7, 2001, the Debtor filed its Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate Free and Clear of Liens and For Approval of Overbid Procedures (the "MegaPath Sale Motion"). Through the MegaPath Sale Motion, the Debtor sought authority to sell assets of the estate consisting of certain Customer Premise Equipment ("CPE Routers") to MegaPath for a purchase of price \$11,500, subject to overbids. The order approving the sale of the CPE Routers to MegaPath was entered on June 28, 2001.

Qwest Sale. On May 7, 2001, the Debtor filed its Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate (Shasta 5000 BSN Equipment) Free and Clear of Liens and For Approval of Overbid Procedures (the "Qwest Sale Motion"). Through the Qwest Sale Motion, the Debtor sought authority to sell assets of the estate consisting of 15 Nortel Shasta systems (the "Shasta Boxes") to Qwest for a total purchase price of \$1,002,400. The order approving the sale of the Shasta Boxes to Qwest was entered on June 15, 2001.

DSL.net Sale. On May 22, 2001, the Debtor filed its Emergency Motion for Order Authorizing Sale and Assignment of Certain Assets of the Estate (Servers) Free and Clear of Liens and For Approval of Overbid Procedures (the "DSL.net Sale Motion"). Pursuant to the DSL.net Sale Motion, the Debtor sought authority to sell certain computer servers to DSL.net for \$125,000. The order approving this sale was entered on June 28, 2001 and payment from DSL.net has been received.

In order to continue to consolidate and wind down its operations in the most cost effective manner, the Debtor seeks an order from the Court allowing the Debtor to sell or otherwise dispose of the miscellaneous non-essential assets pursuant to the procedures describe below.¹

B. Proposed Employment of Liquidation Agent, Compensation of the Liquidation Agent and Proposed Terms of the Liquidation Auction Sale of the Equipment

Due to the nature of the many of the assets to be sold, telecommunications related equipment, and the nature of the bidding audience associated therewith, the Debtor has determined that an online Internet auction will be the most efficient and least costly method to sell the Assets. The online auction sale will not only be less costly than a traditional auction sale, but will also maximize exposure of the auction sale through a wider marketing area, produce more competitive bidding and thereby generate the best value for the Assets.

The miscellaneous assets to be sold can generally be described as used telecommunications equipment and office furniture and office equipment formerly used in the operation of the Debtor's business (the "Assets" or the "Equipment"). Attached as **Exhibit "A"** to the Declaration of Crosby Haffner attached to the Auction Sale Motion is a list of Assets that will be included in the proposed online Internet auction sale.²

To ensure that the estate receives the most value for the sale of the Assets, the Debtor has determined that the following terms regarding employment of ITParade.com, Inc. (the "Liquidation Agent") and online liquidation auction sale procedure pursuant to a certain ITReduce Auction Agreement (the "Auction Sale Agreement") is the most efficient and cost effective way to liquidate the Assets. The Debtor and the Liquidation Agent have spent considerable time negotiating the terms of the proposed Auction Sale Agreement in an effort to realize the best possible deal for the bankruptcy estate. A summary of the terms of proposed Auction Sale Agreement is as follows: ³

¹ The Debtor expects that most of its personal property assets will be sold pursuant to this Sale Motion. However, in order to ensure that all assets are disposed of promptly and for the best possible value, the Debtor has also filed a separate motion for authority to sell assets with a value less than \$25,000 outside the ordinary course of business. These motions together should allow the Debtor to maximize the value of its remaining personal property and shall allow the Debtor to dispose of unsold property that would otherwise be burdensome to the estate.

² The creation of this list is an ongoing work in process and may be supplemented as additional furniture and equipment is identified to be sold. Any such additional assets will be similar in nature and value to the items contained on the attached list.

³ A summary of the material sale terms with Auction Sale Agreement is discussed in this Sale Motion, but the summary and the discussion is not meant to be a complete review of

a. Grant of Rights. Debtor will appoint the Liquidation Agent as its exclusive sales agent to sell the Equipment. Debtor shall allow Liquidation Agent to market, promote and sell the Equipment on the Liquidation Agent's web site located at <https://secure.itparade.com/reocver/submit.cgi> (the "Site"). Nothing contained in the Auction Sale Agreement shall give or convey to Liquidation Agent any right, title or interest in or to the Equipment except as set forth in the Auction Sale Agreement. Debtor shall retain all its ownership rights in the Equipment during the term of the Auction Sale Agreement and, upon a successful bid for and subsequent sale of the Equipment, title to the Equipment shall pass from Debtor to the purchaser. The Equipment shall be stored at Debtor's location.

b. Exclusivity. The Equipment posted on the Site must be offered for sale and sold exclusively on the Site, and cannot be offered for sale or sold concurrently at any other electronic auction site or otherwise offered for sale or sold by any other means during the term hereof. Debtor shall pay Liquidation Agent a fee, as specified below, on any sale of the Equipment in violation of this exclusivity requirement, made to any party by any means.

c. Equipment Availability. The Equipment to be listed for sale on the Site must be available for sale and transfer as of the date stated for the close of the auction. Only Equipment that is not subject to any legal process, lien, claim, demand or encumbrance may be sold on the Site. If any Equipment is not available for sale as required by the Auction Sale Agreement for any reason, the Debtor shall pay the Liquidation Agent a Dispute Fee pursuant to Section 2.3 of the Auction Sale Agreement.

d. Venue Only. The Site serves only as a venue through which buyers and sellers contact each other to conduct business. All transactions occur directly between the buyer and seller, and the Liquidation Agent is not a party to them. It is solely Debtor's responsibility to determine what measures Debtor must take to comply with all legal requirements that apply to any transaction in which the Debtor takes part, such as the payment of taxes and any import or export duties and restrictions.

e. Registration; Dealers Excluded from Recover Site. Debtor will not be permitted to auction the Equipment using the Site until Debtor completes the required information called for on the ITRecover Submission Form available at <https://secure.Liquidation Agent.com/recover/submit.html> ("Submission Form"). If Debtor is registering as a business entity or other organization, the person who completes the Submission Form must have, and by completing the Submission Form represents that he or she does have, authority to bind the business entity or other organization to the terms and conditions of this Agreement. Only sellers who have completed and submitted the Submission Form to the Liquidation Agent may list Equipment for auction on the Site, even if such Equipment is owned by other individuals or entities.

f. Auction Procedures and Policies. Liquidation Agent shall list the Equipment on the Site for auction pursuant to the procedures set forth below. The Debtor will agree to accept any bid price that is equal to or greater than the Asking Price set forth on the Submission Form and complete the sale of the Equipment to the winning bidder. These policies and procedures describe the rules that apply to transactions conducted through the ITRecover service conducted by the Liquidation Agent, which connects buyers with sellers through an active, real-time bidding process located on the Site. Any other terms and conditions governing use of the Site posted at the Site shall also apply unless they are in conflict with these policies and procedures.

g. Duration. An auction for Equipment will be for the term of 7 days unless otherwise specified on the Submission Form or terminated earlier in accordance with this Agreement. The Auction Term shall commence upon the Liquidation Agent's listing of Equipment on the Site. Liquidation Agent will list the Equipment on the Site within 2 business days of Debtor's execution of the Auction Sale Agreement and submission to the Liquidation Agent of the Submission Form and all the sales data necessary to list the Equipment.

////

every provision of the agreement between the parties. The Auction Sale Agreement is the legally binding document the Debtor seeks approval of and, in the event of any inconsistency between the terms, provisions or effect of the Auction Sale Agreement and the description of it in these pleadings, the Auction Sale Agreement alone shall govern alone and not these pleadings or the descriptions herein.

h. Posting of Equipment For Sale. No Equipment will be accepted for posting unless all required information is provided by the Debtor, including the Asking Price (stated in US dollars) and Availability Date. Equipment listed for auction is published on the Site by the Liquidation Agent and any resulting sales must be completed.

i. Withdrawing an Auction Item. Equipment placed on the Site may be withdrawn up until the time a bid equal to or greater than the Asking Price has been posted. The Debtor may withdraw the Equipment by requesting this action in writing to the Liquidation Agent Customer Service Department. The Liquidation Agent will agree to process such withdrawal requests promptly, but will not be responsible for the Debtor's inability to withdraw a posted item if a bid is received while a withdrawal request is being processed. Equipment posted for auction may not be withdrawn once a bid above the Asking Price has been received.

j. Acceptance of Bids by Liquidation Agent. Only bids received prior to the close of bidding will be processed. No bid will be processed unless it meets or exceeds the initial bidding price set by Liquidation Agent (the "Starting Price"), which Starting Price shall be equal to or less than the Asking Price. After a bid meeting or exceeding the Starting Price is posted, only bids that are higher than the highest existing bid will be processed.

k. User Anonymity. Users agree to remain anonymous while engaged in auctions or other activities relating to the Site. Users shall not provide their names, phone numbers, addresses or other personal identifying information anywhere on the Site. If any such information is provided, the Liquidation Agent may remove it and/or prohibit the user that did so from further use of the Site.

l. Bid Manipulation. The Debtor will agree not to manipulate the amount of any bid for the Equipment by bidding itself or through any other party to effect the outcome of an auction or in an effort to force other bidders to increase their bids.

m. Completion Process for Buyers; Payment Methods. At the close of an auction, the winning bidder (the bidder with the highest bid or, if no bids exceed the Asking Price but Buyer has agreed to accept a bid below the Asking Price but equal to or exceeding the Starting Price, the bidder submitting such a bid, hereinafter the "Buyer") is required to submit full payment to Pitney Bowes PitneyEscrow service ("PitneyEscrow") for the winning bid price plus any additional amounts charged Buyer by PitneyEscrow or Liquidation Agent. The Liquidation Agent does not guarantee that the Buyer will fulfill its obligations as described herein. Within 24 hours of receipt of payment by PitneyEscrow, the successful Debtor must make arrangements to release for shipping the Equipment to the winning bidder. Once the Equipment has been received, inspected and confirmed in good working order and as represented by the Buyer, PitneyEscrow is required to release the payment of the winning bid price, less Liquidation Agent's commission, to the Debtor; any disputes concerning Equipment which is nonconforming or was otherwise not represented accurately by the Debtor will be handled as described in Section 1.6.9 of the Auction Sale Agreement. This process and all payments will be made through and handled by PitneyEscrow as further specified below and in PitneyEscrow's Terms of Service, a copy of which is attached as Exhibit B to the Auction Sale Agreement, and any and all other terms of service such as PitneyEscrow may require for the use of their services. Sellers are obligated to complete the transaction if a winning bid exists at the close of an auction.

n. Shipping. The Debtor shall reasonably prepare Equipment for shipping. All shipping will be arranged through the Buyer or by using related services or assistance which may be offered by Liquidation Agent independently from the Auction Sale Agreement; the Liquidation Agent is under no obligation under the Auction Sale Agreement to provide any form of shipping service or otherwise assist in the shipping process. Payment for shipping and transport insurance is the responsibility of the Buyer. The Debtor is NOT responsible for shipping charges, except for any truck detention charges at the selling location. Any additional charges for which the Debtor is responsible will be deducted from the sales proceeds the Debtor receives.

o. Dispute Resolution. If the Equipment arrives at the Buyer's location and it is missing parts, features or otherwise fails to conform to the description Debtor provided in the Submission Form or fails to function or operate as represented or warranted, the Debtor must make restitution in one or more of the following methods within 30 days of notification from Buyer of such nonconformity: (i) provide the missing parts, features or Equipment, (ii) provide substitute Equipment equal in value to the missing parts, features or Equipment acceptable to Buyer, (iii) agree in writing to a deduction from the purchase price, acceptable to Buyer, such

deduction to reduce the balance remaining in escrow for the Debtor. If the Equipment is not in the condition represented by Debtor on the Submission Form, the Equipment is subject to return to the Debtor for a full refund of the escrow funds, at the discretion of Liquidation Agent and/or the Buyer, or Debtor must make restitution in one or more of the methods outlined above. In addition, if, as determined by Buyer and proven by Buyer to Liquidation Agent in Liquidation Agent's sole discretion, the Equipment is non-conforming, Debtor shall pay Liquidation Agent a Dispute Fee as described in Auction Sale Agreement.

p. Permissible and Prohibited Uses. Debtor may register and use the Site for a particular transaction only if Debtor intends, in good faith, to conclude that transaction through the Site. Should Liquidation Agent determine, in its sole discretion, that a Debtor is using the Site in a manner inconsistent with this requirement, the Liquidation Agent may revoke Debtor's registration. Specific rules regarding what constitutes a good faith intent to use the Site are set forth under the Auction Procedures and Policies in the Auction Sale Agreement and any other terms and conditions, posted on the Site, that apply to the use of each of the functions available on the Site. Debtor may not use the Site for anything other than a lawful and legitimate business purpose. Examples of prohibited uses of the Site include, but are not limited to, the following: (a) selling stolen property; (b) false advertising; (c) deceptive and unfair trade practices; (d) placement on the Site of any untrue, malicious, fraudulent, harassing, offensive or defamatory material, or any material that is irrelevant to a legitimate use of the Site; (e) introduction of viruses, worms or other programming routines that are intended to disrupt or interfere with the intended operation of the Site; (f) insertion of links to other sites of whatever character; (g) promotion of any unlawful activity or purpose, including any activity that could give rise to criminal or civil liability; (h) manipulation of pricing on transactions by any means, including the placement of bad faith bids, use of shells in the auction process or collusion between a buyer and Debtor to cause harm to a competitor; (i) unauthorized alteration of any data or information supplied by another user of the site; or (j) any activity that infringes on the copyright, patent, trademark or other rights of any person or entity. If Debtor engages in a prohibited use of the Site, the Liquidation Agent may revoke Debtor's registration and Debtor may be barred from any future use of the Site. Any content introduced to the Site as a result of or which constitutes an impermissible use, as determined in the sole discretion of Liquidation Agent, may be removed from the Site. If Debtor engages in a prohibited use of the Site, Debtor will be liable to Liquidation Agent for damages it causes as a result of such violation.

q. Responsibility of User. Debtor is responsible for ensuring that only Debtor or Debtor's designees have access to Debtor's user ID and password. Any information transmitted through the Site will be solely the responsibility of the registered user whose ID and password were utilized to gain access. A registered user should immediately change its password if unauthorized use of the Site occurs. Liquidation Agent reserves the right to modify these terms and conditions at any time. Liquidation Agent will advise Debtor of such changes and their effective date via e-mail, through a notice posted on the Site, or both. Such modifications will apply only to use of the Site that commences after the effective date of the modification.

r. Notice of Future Sales. If the Debtor fails to sell the Equipment through the Site, but subsequently sells the Equipment within a subsequent period equal in length to six times the length of the Auction Term, such period to commence upon closing of the auction, withdrawal by the Debtor, or removal of Equipment from the Site by Liquidation Agent (a "Future Sale"), Debtor shall send written notice to Liquidation Agent of the sale which includes the identity of the purchaser and date of sale within 2 days of completion of the Future Sale. If Debtor fails to provide such notice, Buyer shall be required to pay an Off-Site Sale Fee on the Future Sale, as described below, regardless of when or to whom such Sale is made.

s. Commission. The Liquidation Agent's commission shall be 5% of the winning bid price for the Equipment (the "Commission"). The Liquidation Agent reserves the right, in its sole discretion, to reduce or eliminate such Commission, or Commission may be reduced or eliminated upon the mutual written agreement of the parties.

t. Off-Site Sales. The Debtor acknowledges that the Site provides a service of considerable value to both buyers and sellers who use it. The Debtor shall be deemed to have made an Off-Site Sale if the Debtor (i) sells any equipment within a period equal in duration to six times the length of the Auction Term, such period to commence upon closing of the auction, withdrawal by the Debtor, or removal of Equipment from the Site by Liquidation Agent, unless Debtor can demonstrate that such transaction was not in any way facilitated by Debtor's use of the Site, (ii) sells Equipment in violation of the exclusivity requirement in Section 1.2 of the Auction Sale Agreement, or (iii) fails to notify the Liquidation Agent of a Future Sale in violation of the Auction Sale Agreement. In the event of an Off-Site Sale, Debtor shall pay Liquidation Agent an amount equal to what the

Commission would have been had Debtor made the sale through the Auction Procedures as described in the Auction Sale Agreement (the "Off-Site Sale Fee"). Off-Site Sales shall include, but not be limited to, sales to any parties who became aware of the Equipment or Debtor via Liquidation Agent's web sites, sales to any parties whose interest in the Equipment became known to Debtor via Liquidation Agent's web sites, the sale of equipment similar to the Equipment posted on the Site after discussion with the buyer regarding modifications to the sale terms, and sales made through any other electronic auction site or otherwise in violation of the exclusivity requirement of Section 1.2 of the Auction Sale Agreement, all as determined in Liquidation Agent's sole discretion.

u. Dispute Fees. As determined by the Liquidation Agent in its sole discretion, if (i) the Equipment as delivered to the Buyer fails to conform to the description provided by the Debtor on the Submission Form, and Buyer does not receive adequate restitution pursuant to Section 1.6.9 of the Auction Sale Agreement, (ii) the Debtor is a Dealer in violation of Section 1.5 of the Auction Sale Agreement, (iii) the Debtor misrepresents or lacks the authority required to enter into the Auction Sale Agreement or ability to sell the Equipment as required by Sections 1.3 or 1.5 of the Auction Sale Agreement, or (iv) otherwise fails to sell the Equipment as required by the Auction Sale Agreement, then, in addition to all other fees payable hereunder and regardless of how the dispute is resolved under Section 1.6.9 of the Auction Sale Agreement, the Debtor shall pay Liquidation Agent a Dispute Fee in an amount equal to the greatest of (i) \$200, (ii) 1% of the Asking Price or (iii) 1% of the highest bid price received for the Equipment.

v. Payment. Payments on all Liquidation Agent transactions, except Off-Site Sales or Dispute Fees, shall be handled by PitneyEscrow. Debtor shall be paid the winning bid price less the Commission, which Commission shall be paid to Liquidation Agent. The Commission shall be paid to Liquidation Agent by PitneyEscrow prior to the final payment to Debtor. The winning bid price is exclusive of all taxes, fees, and other assessments levied by federal, state, local and other governments related to the sale of the Equipment under the Auction Sale Agreement, which shall be paid by the Buyer. Debtor shall pay any Off-Site Sales Fees or Dispute Fees directly to Liquidation Agent within thirty days of the Off-Site Sale or notice of Liquidation Agent's imposition of a Dispute Fee. Should Debtor fail to pay any of the amounts, including but not limited to Commissions, Off-Site Sales Fees or Dispute Fees, that are owed to Liquidation Agent under the Auction Sale Agreement, the Debtor will also be liable for the costs that the Liquidation Agent incurs in collecting such amounts, including reasonable attorneys' fees. Should the Liquidation Agent fail to pay any of the amounts that are owed to the Debtor under the Auction Sale Agreement, the Liquidation Agent will also be liable for the costs that the Debtor incurs in collecting such amounts, including reasonable attorneys' fees.

Any sale of the Debtor's Assets shall be expressly conditioned on a Court order authorizing the sale of the Assets free and clear of liens, with liens and encumbrances not satisfied through the sale to attach to the proceeds of the sale in the same validity and priority pending agreement between the parties or further Court order.

The services to be performed by the Liquidation Agent include all online marketing and advertising of the Assets for sale, subject to the conditions set forth in the Auction Sale Agreement, consummating and completing all transactions whether through auction or private sale through the use of the escrow agent PitneyEscrow Service and any and all services necessary to maximize the value of the Assets for the benefit of the bankruptcy estate.

All payments on the online auction sale transactions shall be conducted through a professional escrow company, PitneyEscrow Service. The funds for the purchase the Assets will be deposited into escrow and will be disbursed by the escrow company. Accordingly the Liquidation Agent will not be obtaining a blanket bond. However, to alleviate any concerns, the Liquidation Agent has provided evidence of its current liability insurance. The Liquidation Agent has advised the Debtor that the total value of all pending bankruptcy auctions in which the Liquidation Agent is involved in this district does not exceed the liability insurance coverage.

The Debtor believes that the proposal of the Liquidation Agent is fair and reasonable and that the Debtor should be authorized to employ the Liquidation Agent on the terms and conditions set forth in the Auction Sale Agreement.

The Debtor is satisfied from Davie Declaration that the Liquidation Agent is disinterested person within the meaning of Bankruptcy Code Section 101(14).

///
///

C. Summary of Debtor's Blanket-Lien Secured Obligations

A lien search was conducted on March 5, 2001 on Lexis-Nexis on assets of the Debtor's bankruptcy estate. The search was conducted using the following terms: "Zyan Communications", "Internet Express Network", "Internet Express Networks" and "Internet Design Group". No documents were found when the same names were searched in a Lexis-Nexis source library containing judgments liens.

The secured creditors with a blanket secured interest in substantially all assets of the bankruptcy are Critical Mass Ventures LLC, George A Hormel II Trust, The RHB Insurance Trust, Breitman Children's Insurance Trust, Breitman Irrevocable Life Insurance Trust (collectively the "Secured Parties").

Following is a summary of how the Secured Parties with a blanket interest in the assets of the estate are listed in the Debtor's Bankruptcy Schedule D:

<u>Creditor</u>	<u>Description of Collateral</u>	<u>Approximate Amount Owed</u>
Critical Mass Ventures LLC 1920 San Vicente Blvd Santa Monica, CA 90402	UCC Financing Statement filed 12/27/99 Instrument No. 9936460033 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$1,725,000.00
The George A Hormel II Trust 6112 Paradise View Dr Paradise Valley, AZ 85253	UCC Financing Statement filed 10/19/00 Instrument No. 0029960130 Convertible Loan dated October 16, 2000 secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$507,000.00
The RHB Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/16/00 Instrument No. 029960134 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$304,000.00
Breitman Children's Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/19/00 Instrument No. 0029960127 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$102,000.00

<u>Creditor</u>	<u>Description of Collateral</u>	<u>Approximate Amount Owed</u>
Breitman Irrevocable Life Insurance Trust c/o Brian T Corrigan Esq Corrigan & Morris 201 N Figueroa St #690 Los Angeles, CA 90012	UCC Financing Statement filed 10/19/00 Instrument No. 0029960124 Convertible Loan dated October 16, 2000 Loan secured by blanket lien on Debtor's right, title, estate, claim and interest in and to any or all of the Debtor's tangible and intangible assets (including but not limited to intellectual property), and proceeds therefrom.	\$102,000.00

Pursuant to a certain Settlement Agreement approved by the Court at a hearing held on September 26, 2001, the Debtor and the Secured Parties have settled the claims asserted by the Secured Parties against the bankruptcy estate. In brief, the settlement provides that in full and complete satisfaction of all claims asserted by Secured Parties, the Debtor shall pay the Secured Parties the total sum of \$2,100,000. The Debtor believes that the Secured Parties have or will consent to the sale of the Assets as proposed herein.

D. Resolution of the Nortel - NTFC UCC-Financing Statement

In addition, NTFC Capital Corporation was listed in Scheduled D with regards to a UCC-1 Financing Statement filed on September 19, 2000, Instrument No. 0026460340 (the "NTFC Financing Statement"). The NTFC Financing Statement relates to the alleged lease of certain Shasta Boxes that was never consummated with Nortel Networks, Inc. (the "Alleged Lease"). Pursuant to Court order entered on June 18, 2001, the Debtor was authorized to settle and compromise all claims concerning the equipment under the Alleged Lease and entered into a settlement agreement with Nortel. Pursuant to the Nortel settlement, among other things, the Debtor returned 10 Boxes to Nortel and retained 15 Boxes free of any liens asserted by Nortel and NTFC. The 15 Boxes were then sold to Qwest Communications International, Inc. ("Qwest") for approximately \$1,002,300. Accordingly, the NTFC Financing Statement has been resolved and no assets secured by the NTFC Financing Statement shall be sold pursuant to this Procedures Motion.

E. UCC-Financing Statements Related to Lessors

Additional secured parties exist whose collateral consists of miscellaneous leased equipment (the "Lessors"). Following is a list of the Lessors whose collateral consists of miscellaneous equipment leased to the Debtor:

<u>Lessor</u>	<u>Status of Leases</u>
Bancorp Financial Services, Inc	Lease No. 07068 deemed rejected pursuant to Court order entered on August 14, 2001
GE Capital Business Finance, a Division of General Electric Capital Business Asset Funding Corp	Lease No. 060-0002178 deemed rejected pursuant to Court order entered on August 14, 2001
The Manifest Group	Lease Nos. 677613 and 682039 deemed rejected pursuant to Court order entered on August 14, 2001
JDR Capital Corporation (The UCC-1 search from Lexis incorrectly indicates that the secured party/lessor is Internet Design Group, a dba of the Debtor. Internet Design Group was listed as an additional lessee on the UCC-1 Financing Statement and the correct lessor under the UCC-1 is JDR Capital Corporation.)	Lease No. 1581770 deemed rejected pursuant to Court order entered on August 14, 2001.

<u>Lessor</u>	<u>Status of Leases</u>
JDR Capital Corporation	Lease No. 2076210 deemed rejected pursuant to Court order entered on August 13, 2001
Compaq Financial Services Corporation	Lease No. 50000 BCE deemed rejected pursuant to Court order entered on February 14, 2001. Lease No. 569538 (transferred from CC Finance LLC) deemed rejected pursuant to Court order entered on August 13, 2001.
Advanta Leasing	Lease Number 052 5505468-001 deemed rejected pursuant to Court order entered on February 14, 2001. Lease Number 5505468-002 deemed rejected pursuant to Court order entered on August 13, 2001.
First Sierra Financial, Inc.	First Sierra Lease No. 212533/254475 (assigned to Advanta Bank Corp.) deemed rejected pursuant to Court order entered on August 29, 2001
Sunrise Leasing Corporation (Cisco Systems)	Lease Number 72007043 AA deemed rejected pursuant to Court order entered on March 20, 2001. Lease Number 72007043AD deemed rejected pursuant to Court order entered on August 13, 2001.

Although it appears that all equipment leases have been deemed rejected, in the event that it is determined that any of the Assets to be sold are the subject of an executory contracts or lease agreement, the Debtor will only conduct a sale of such asset if the Lessor consents to the sale. Where the Assets to be sold are subject to executory contracts or lease agreements, the Debtor would assume and assign such related leases and/or executory contracts pursuant to Bankruptcy Code Section 365(a). The buyer must have legal authority to enforce performance under the subject leases as well as any other executory contracts related to equipment purchased by buyers. Likewise, the Lessor parties to the leases and contracts must have a basis for seeking the buyer's performance thereunder. Accordingly, the Debtor requests that the Court approve assumption and assignment of the executory contracts and/or leases relating to Assets sold during the liquidation sale wherein buyers are found and the Lessors consent to the sale.

To the extent necessary, the Debtor shall cure all payment defaults of any executory contracts and unexpired leases pertaining to the Assets that are ultimately included in the sale so that such executory contracts and unexpired leases may be assumed and assigned to the successful buyers.

The Debtor believes that the Lessors have or will consent to the liquidation sale proposed herein.

F. Good Cause Exists to Approve the Sale Motion

The negotiation of the proposed sale was an arms-length transaction. The negotiation with the Liquidation Agent has resulted in offer to conduct the liquidation sale which will have substantial benefit. As set forth in the Notice of the Sale Motion, creditors will have been provided with sufficient notice of the sale. Accordingly, the sale is in good faith and should be approved. The Debtor shall request such a finding pursuant to Bankruptcy Code Section 363(m) at the hearing on this Sale Motion.

The Debtor believes that the sale pursuant to the foregoing terms will be at a fair market value and that proposed liquidation sale will provide the maximum possible value for the Assets. The online Internet auction will not only be less costly than a traditional auction sale, but will also maximize exposure of the Assets through a wider marketing area, produce more competitive bidding and thereby generate the best value for the Assets.

The Debtor has made a business decision that it is in the best interest of the creditors of this estate that this Sale Motion be approved. As a result of developments since the Petition Date, the Debtor believes the only option available is the orderly sale of its operating assets. The Debtor has undertaken extensive efforts to consolidate operations, and to reduce overhead and operating costs to a minimum level necessary to maintain and preserve the value of assets until they can be sold. In order to continue to consolidate and wind down its operations in the most cost effective manner, the Debtor seeks an order from the Court authorizing the online liquidation sale of the Assets as proposed herein.


In essence, based on good business reasons, including the economics of the Debtor's situation, the Sale Motion should be approved.

For further information please see the **Debtor's Motion for Order Authorizing Debtor to Conduct Liquidation Sale and Assignment of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Section 363, and to Employ Liquidation Agent and Pay Compensation Thereof**; Memorandum of Points and Authorities and Declarations of Crosby Haffner and Robert Davie in Support Thereof on file with the Clerk of the above-entitled Court which may be reviewed on Monday through Friday from 9:00 A.M. to 4:00 P.M. A copy of the Auction Sale Motion may be obtained by written request to the Debtor's attorney at the address indicated below.

PLEASE TAKE FURTHER NOTICE, that objections, if any, shall be filed with the Clerk of the above Court located at 300 North Los Angeles Street, Los Angeles, California 90012, with a filed-stamp courtesy copy delivered to the chambers of the Honorable Kathleen P. March, United States Bankruptcy Judge, and a copy served upon Marshack Shulman Hodges & Bastian LLP to the attention of James C. Bastian, Jr., 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610 and the Office of the United States Trustee, 221 North Figueroa, Suite 800, Los Angeles, California 90012, no later than fourteen (14) days prior to the scheduled hearing. Failure to file a timely response may be deemed as consent to the relief requested in the Motion. **SEE, LOCAL BANKRUPTCY RULE 9013-1(a)(7).**

Dated: October 8, 2001

James C. Bastian, Jr. - Bar No. 175415
Mark Bradshaw - Bar No. 192540
MARSHACK SHULMAN HODGES & BASTIAN LLP
26632 Towne Centre, Suite 300
Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
Facsimile: (949) 340-3000



James C. Bastian, Jr.
Mark Bradshaw
Attorneys for the Debtor and
Debtor in Possession Zyan Communications, Inc.,
a Delaware corporation

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the City of Foothill Ranch, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is 26632 Towne Centre, Suite 300, Foothill Ranch, California 92610.

On October 2, 2001, I served the documents named below on the parties in this Action as follows:

DOCUMENT(S) SERVED:

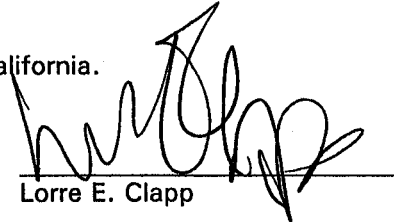
**NOTICE OF HEARING ON DEBTOR'S MOTION FOR ORDER
AUTHORIZING DEBTOR TO CONDUCT AUCTION LIQUIDATION
SALE AND ASSIGNMENT OF PERSONAL PROPERTY ASSETS
OF THE ESTATE FREE AND CLEAR OF LIENS PURSUANT TO
BANKRUPTCY CODE SECTION 363, AND TO EMPLOY
LIQUIDATION AGENT AND PAY COMPENSATION THERETO**

SERVED UPON:

SEE THE ATTACHED SERVICE LIST

- [X] **(BY MAIL)** I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Foothill Ranch, California. I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- [] **(BY FACSIMILE)** I delivered to an authorized facsimile service company the above-referenced document and facsimile cover sheets to be transmitted immediately. Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list. A proof of service signed by the authorized facsimile service company will be filed forthwith.
- [] **(BY FACSIMILE)** The above-referenced document was transmitted by facsimile transmission and the transmission was reported as completed and without error. Pursuant to C.R.C. 2009(i), I either caused, or had someone cause, the transmitting machine to properly transmit the attached documents to the facsimile numbers shown on the service list.
- [] **(BY FEDERAL EXPRESS)** I am readily familiar with the practice of Marshack Shulman Hodges & Bastian LLP for collection and processing of documents for overnight delivery and know that the document(s) described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.
- [] **(BY PERSONAL SERVICE)** I delivered to an authorized courier or driver authorized by ASAP Corporate Service to receive documents to be delivered on the same date. A proof of service signed by the authorized courier will be filed forthwith.
- [] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- [X] **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court, at whose direction this service was made.

Executed on October 2, 2001, at Foothill Ranch, California.


Lorre E. Clapp